

FCC MAIL SECTION

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 96M-87

61186

In the Matter of) MM Docket No. 95-154
)
CONTEMPORARY MEDIA, INC.)
)
Licensee of Stations WBOW(AM), WBFX(AM), and)
WZZQ(FM), Terre Haute, Indiana)
)
Order to Show Cause Why the Licenses for)
Stations WBOW(AM), WBFX(AM), and WZZQ(FM),)
Terre Haute, Indiana, Should Not be Revoked)
)
CONTEMPORARY BROADCASTING, INC.)
)
Licensee of Station KFMZ(FM), Columbia,)
Missouri, and Permittee of Station KAAM-FM,)
Huntsville, Missouri (unbuilt))
)
Order to Show Cause Why the Authorizations for)
Stations KFMZ(FM), Columbia, Missouri, and)
KAAM-FM, Huntsville, Missouri, Should Not be)
Revoked)
)
LAKE BROADCASTING, INC.)
)
Licensee of Station KBMX(FM), Eldon, Missouri,)
and Permittee of Station KFXE(FM), Cuba,)
Missouri)
)
Order to Show Cause Why the Authorizations for)
Stations KBMX(FM), Eldon, Missouri, and)
KFXE(FM), Cuba, Missouri, Should Not be Revoked)
)
LAKE BROADCASTING, INC.) File No. BPH-921112MH
)
For a Construction Permit for a New FM Station)
on Channel 244A at Bourbon, Missouri)

MEMORANDUM OPINION AND ORDER

Issued: April 24, 1996 ; Released: April 26, 1996

1. Under consideration are: (a) a Request for Permission to File Motion for Summary Decision and Motion for Summary Decision, filed on April 19, 1996, by the Mass Media Bureau ("Bureau"); (b) a Request for Stay, filed on April 19, 1996, by the Bureau; and (c) Proposed Findings of Fact and Conclusions of Law on Issue One, filed on April 19, 1996, by the Bureau.

2. The Bureau requests permission to file a motion for summary decision of Issue 1.¹ In support, the Bureau contends that disposition of Issue 1 will obviate the need for further hearings on the remaining issues, thereby conserving the Commission's resources.² The Bureau also requests that this proceeding be stayed in order to conserve the resources of the Commission and to avoid any burden on potential witnesses scheduled to be deposed.³ Counsel for the Licensees has informally advised the Presiding Judge that no objection will be interposed to a grant of the Bureau's Request for Permission to File Motion for Summary Decision and to the Bureau's Request for Stay.

3. The Bureau's requests will be denied. It is well settled that the Commission, as a matter of policy, looks with disfavor on the bifurcation of hearing proceedings. In RKO General, Inc., 61 FCC 2d 1062, 1063-64 (1976), the Commission stated:

A bifurcated hearing procedure which disposes of only some of the designated issues should not be undertaken by a presiding judge without prior Commission authorization. . . . Where several issues are designated for hearing, the better procedure, and the one which conforms to established Commission policy, is for the presiding judge to take evidence and to make findings of fact and conclusions of law as to all issues in order to prevent needless remands. [Citations omitted]

The Commission also expressed its concern that the bifurcation of hearings could lead to a multiplicity of appeals or judicial review proceedings. Id. at 1064.⁴

4. Here, the inadvisability of bifurcating this case is clear. Thus, a grant of the Bureau's motion for summary decision (*i.e.*, the disqualification of the Licensees on the basis of Issue 1) would surely lead to an appeal to the Commission. The reversal of that disqualification by the Commission would lead to a remand in order to complete the hearing on the remaining issues. Conversely, a denial of the Bureau's motion for summary decision (*i.e.*, a determination that Issue 1 should be resolved in the Licensees' favor) would lead both to an appeal by the Bureau and, simultaneously, to the completion of the remainder of the hearing. Under these circumstances, the better and more

¹ Issue 1 seeks to determine the effect of Michael Rice's criminal convictions on the basic qualifications of Contemporary Media, Inc., Contemporary Broadcasting, Inc., and Lake Broadcasting, Inc. (collectively "Licensees").

² The remaining issues seek to determine whether the Licensees made misrepresentations to the Commission (Issue 2), whether there was an unauthorized transfer of control of the Licensees (Issue 3), and whether the Licensees possess the requisite qualifications to be or remain Commission licensees (Issue 4).

³ The hearing is scheduled to resume on May 21, 1996. See Order, FCC 96M-83, released April 22, 1996.

⁴ Although the latter comment was made in the context of comparative proceedings, the policy factors underlying the Commission's determination are equally applicable to the instant case.

efficient course of action would be the completion of the hearing at this juncture and the issuance of a single initial decision resolving all of the issues in this proceeding.

Accordingly, IT IS ORDERED that the portion of the Bureau's Request for Permission to File Motion for Summary Decision and Motion for Summary Decision, filed April 19, 1996, seeking permission to file a motion for summary decision, IS DENIED.

IT IS FURTHER ORDERED that the portion of the Bureau's Request for Permission to File Motion for Summary Decision and Motion for Summary Decision, filed April 19, 1996, seeking summary decision of Issue 1, IS DISMISSED.

IT IS FURTHER ORDERED that the Bureau's Request for Stay, filed April 19, 1996, IS DENIED.

IT IS FURTHER ORDERED that the Bureau's Proposed Findings of Fact and Conclusions of Law on Issue One, filed April 19, 1996, ARE DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script, reading "Arthur I. Steinberg".

Arthur I. Steinberg
Administrative Law Judge